In the United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

N. RUDEBECK, R. H. RAMSAY and DORA A. RAMSAY,
Petitioners,

vs.

W. P. SANDERSON as Trustee in in Bankruptcy of the NONPAREIL CONSOLIDATED COPPER COMPANY, a Corporation, Bankrupt, and NONPAREIL CONSOLIDATED COPPER COMPANY, a Corporation,
Respondents.

No. 2624

IN THE MATTER OF NONPAREIL CONSOLIDATED COPPER COMPANY, BANKRUPT.

Upon Review from the United States District Court, For the Western District of Washington, Northern Division.

Reply Brief of Petitioners.

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I.

Replying to the statement contained in Respondents' Brief on page 8 that "the Supreme Court of Washington has held that the trustees of a corporation may make a general assignment for the benefit of creditors," we desire to state that the Supreme Court of Washington has never passed upon the question as to whether the authority rests in the stockholders or trustees to authorize the making of an assignment for the benefit of creditors. Nor do the Washington cases cited by respondents sustain the statement that the trustees may make the assignment.

In the case of *Nyman v. Berry*, 3 Wash. 734, there is no mention made as to who authorized the assignment.

McKay v. Elwood, 12 Wash. ~~679~~ 579, was an action to recover upon an unpaid subscription to corporate stock and it is stated in the opinion that the corporation made an assignment of all of its assets to a trustee for the benefit of its creditors, "Which deed of assignment was executed in pursuance of a resolution of the board of directors of said corporation *acting under authority and direction of its stockholders.*"

In the case of *Cerf & Co. v. Wallace*, 14 Wash. 249, it is simply stated in the opinion that the corporation made an assignment for the benefit of its creditors. It does not appear under what authority the assignment was made, whether by resolution of the stockholders or trustees.

Judge Neterer, in the District Court of the United States, for the Western District of Washington, Northern Division, in the matter of Kitsap Title Abstract Co., Bankrupt, No. 5232, on a petition to vacate the adjudication in bankruptcy on the ground that the making and filing of the petition in bankruptcy admitting the inability of the corporation to pay its debts, was not authorized by the stockholders, held that under the Washington statutes such authority rests only in the stockholders. We do not find this case reported in the Federal Reporter but make reference to it, and state further that it is now the rule and practice in Judge Neterer's Court that a corporation's voluntary petition in bankruptcy must be accompanied by a certified copy of the resolution of the stockholders authorizing the making and filing of the petition admitting the inability of the corporation to pay its debts under Sec. 3a (5), 30 Stat. 546, as amended by Act February 5, 1903, c487, 32 Stat. 797.

Respondents do not have the temerity to contend or claim that the stockholders did authorize the execution and filing of the petition in voluntary bankruptcy. They maintain that the board of trustees of a corporation under the Washington statutes possess that power. They attempt to support their contention by referring to decisions of other circuits involving the construction of corporate laws dissimilar to those of Oregon and

Washington. If the Court should determine that the stockholders and not the trustees have this requisite authority, respondents then ask that it be held that the petition to vacate cannot be considered because the petition in bankruptcy is silent as to whether or not the stockholders authorized the procedure. And this in the face of the positive allegation in the petition in bankruptcy that "*its board of directors has duly authorized such acts on its part.*"

The petition *In re Quartz Gold Mining Co.*, 157 Fed. 244, simply recites that by resolution adopted by its board of directors the corporation admitted in writing its inability to pay its debts and its willingness to be judged a bankrupt. To which a demurrer was sustained.

In Re Jefferson Casket Co., 182 Fed. 689, no proper authorization was alleged in the petition and the court held that no jurisdiction was conferred.

II.

It is alleged in the petitions to vacate the adjudication in bankruptcy that no notice was ever given to the stockholders by the calling of a meeting for the purpose of authorizing the execution of the petition in bankruptcy and that no meeting of the stockholders was ever held for such purpose; that the trustees at all times were absent from the State of Washington and do not, and did

not, reside in the State of Washington. These allegations stand admitted under respondents' motion to dismiss and it seems to us that the petitioning stockholders should have their day in Court and an opportunity to prove the allegations of their petition to vacate, if the Court should find that the lack of jurisdiction does not appear from the face of the record.

Respectfully submitted,

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J. A. GUIE,

Attorneys for Petitioners.